

REMARKS

Claims 1-36 are pending in this application.

Election/Restriction

The Examiner has required restriction of the invention under 35 U.S.C. § 121 to one of the following groups:

I. Claims 2-4, 13-22, 28-33 and 36 drawn to a method of determining whether a subject has an bone marrow derived stem cell dependent metaplasia, comprising detecting the presence of BMDC polypeptide classified in Class 435, subclass 7.1, 372.

II. Claims 5-7 , drawn to a method for assessing the efficacy of a treatment for cancer and a method for monitoring the progression of a BMDC-associated cancer, classified in Class 435, subclass 7.1, 372.

III. Claim 8, drawn to a method for selecting for a composition for treating BMDC, comprising determining whether the test compound reduces proliferation of the cells, classified in Class 435, subclass 375.

IV. Claim 9, drawn to a method for selecting for a composition for treating BMDC, comprising determining whether the test compound increases the differentiation of the cells, classified in Class 435, subclass 377.

V. Claims 10-12 , drawn to a method of treating a subject, comprising administering a BMDC modulator to the subject, classified in Class 424, subclass 184.1.

VI. Claims 23- 26 drawn to a method of determining whether a subject has an bone marrow derived stem cell dependent metaplasia, comprising detecting the presence of BMDC nucleic acid classified in Class 435, subclass 6.

VII. Claim 27 , drawn to a kit, classified in Class 435, subclass 810.

VIII. Claims 34 and 35 , drawn to a method of treating a chronic inflammatory condition , comprising administering a transfected BMDC to the subject, classified in Class 424, subclass 577.

Applicants respectfully traverse the foregoing Restriction Requirement and submit that the requirement is improper. However, in order to be considered responsive to the instant Office Action, Applicants hereby elect Group I (claims 2-4, 13-22, 28-33, and 36), *with traverse*. Applicants traverse the Restriction Requirement to the extent that Groups I and VI should be

reformed as a single group containing claims 1-4, 13-26, 28-33, and 36 (referred to hereinafter as "***newly formed Group I***"). Applicants' grounds for traversal are set forth below.

It is respectfully submitted that Applicants have presented an allowable generic claim, *i.e.*, claim 1. Claim 1 is drawn to methods for determining whether a subject has an bone marrow derived stem cell (BMDC) dependent metaplasia, comprising ***detecting the presence of BMDC's or BMDC-derived cells*** in a test sample from the subject. It is Applicants' position that while a species election may be proper among groups I and VI for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable, an election under 35 U.S.C. §121 is improper since the claims are linked by an allowable generic linking claim (see M.P.E.P. §809.02). Claim 1 embraces the species of detecting the presence of BMDC polypeptides and BMDC nucleic acids. If a species election is required, Applicants further provisionally elect Group I, detecting the presence of BMDC polypeptides, for search purposes only. It is Applicants' understanding that the search will be extended to the remaining species upon a finding of allowability.

The Examiner has indicated, and it is Applicants' understanding, that claim1 links inventions I and VI. Therefore, upon allowance of the linking claim(s), the restriction requirement as to the linked inventions shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination.

Applicants reserve the right to traverse the above restriction with respect to the non-elected Groups in this or subsequent applications.

SUMMARY

A request for a one month extension of time and a Fee Transmittal form are being filed concurrently herewith. Please charge the \$60.00 extension fee to our Deposit Account No. 12-0080, under Order No. UMY-043, from which the undersigned is authorized to draw. The Director is authorized to charge any additional fees, or credit any overpayment, to Deposit Account No. 12-0080.

If a telephone conversation with Applicants' Attorney would expedite the prosecution of the above-identified application, the examiner is urged to call the undersigned at (617) 227-7400.

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Respectfully submitted,

By 

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